

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rex Post Office
Rex, North Carolina

Docket No. A2011-42

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

October 19, 2011

I. INTRODUCTION

On August 10, 2011, the Commission received a petition from James E. Shaw (Petitioner) on behalf of the citizens of Rex Community to review the Postal Service's decision to close the Rex Post Office in Rex, North Carolina (Rex Post Office).¹ On August 11, 2011, the Commission issued Order No. 798, which institutes the current review proceeding, appoints a Public Representative, and establishes a procedural schedule.² In accordance with Order No. 798, the Postal Service filed the administrative record for the closing.³ The Postal Service also filed comments concerning the appeal.⁴

¹ Petition for Review Received from James E. Shaw Regarding Rex, NC Post Office 28378, August 10, 2011 (Petition). A petition in support of the appeal signed by citizens from the Rex community is attached to the Shaw Petition.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 11, 2011 (Order No. 798).

³ United States Notice of Filing, August 24, 2011 (Administrative Record). The Final Determination appears as item 47 of the Administrative Record.

⁴ United States Postal Service Comments Regarding Appeal, October 4, 2011 (Postal Service Comments).

II. STATEMENT OF FACTS

The Rex Post Office provided retail postal services and service to 113 post office box customers. Administrative Record, Item 13. No delivery customers were served through this office. *Id.* The Rex Post Office, an EAS-11 level facility, had retail hours of 8:30 a.m. to noon and 1:00 p.m. to 4:30 p.m., Monday through Friday, and 24 hour lobby access Monday through Saturday. Final Determination at 2.

The Rex Post Office postmaster retired on February 28, 2011. An OIC had been installed to operate the office. *Id.* Retail transactions averaged 23 transactions daily (23 minutes of retail workload). *Id.* Office receipts averaged less than \$22,000 annually for the past three years. *Id.* There are no permit or postage meter customers. *Id.* By closing this office, the Postal Service anticipates saving \$39,111 annually. Administrative Record, Item 29.

After the closure, retail services will be provided by the Lumber Bridge Post Office located 2 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through this office. Lumber Bridge Post Office is an EAS-15 level facility, with retail hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, and 9:30 a.m. to noon, Saturday. Ninety-nine post office boxes are available.

III. POSITIONS OF THE PARTIES

A. Petitioner

The Petitioner contends the community's identity highlights the need for the Rex Post Office. He argues:

The citizenry feels the degree of regular and effective services will be reduced dramatically if the Post Office is closed. Service is so important to a number of senior citizens, poverty stricken, unemployed, limited educational background, individuals with no transportation or limited transportation.

Petition at 1.

B. The Postal Service

The Postal Service believes the appeal raises two main issues: (1) the effect on postal services; and (2) the impact upon the Rex community expected to result from discontinuing the Rex Post Office. Postal Service Comments at 1. The Postal Service contends that it has given both issues serious consideration. *Id.* For example, the Postal Service asserts that it has addressed the community identity concern by continuing the use of the Rex name and ZIP Code in addresses. *Id.* at 8. The Postal Service also asserts that it has considered other statutory issues such as the calculation of economic savings and the impact on postal employees. *Id.* at 2.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination on the basis of the record that was before the Postal Service. The Commission is empowered by § 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be: (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.⁵

⁵ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal.

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404(d)(2)(A) to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

V. ARGUMENT

A. The Postal Service Appears to Have Followed Required Procedural Steps in Reaching its Final Determination

The record indicates the Postal Service has taken the following steps in reaching its Final Determination. On March 1, 2011, the Postal Service distributed 113 questionnaires to post office box customers and made questionnaires available at the counter for retail customers. Final Determination at 2. Thirty-five questionnaires were returned. *Id.* On March 9, 2011, the Postal Service held a community meeting with 38 customers in attendance. *Id.* The Postal Service posted the proposal to close the Rex Post Office for approximately 60 days, from March, 28, 2011, to May 29, 2011. *Id.* The Final Determination was posted from July 8, 2011, to August 9, 2011. *Id.* at 1. Discontinuance of operations was scheduled for October 8, 2011. Administrative Record, Item 50.

The Public Representative believes these steps demonstrate that the Postal Service sought input from the public, and substantially complied with the notice and posting requirements of 39 U.S.C. § 404(d).

B. The Postal Service Appears to Have Considered the Pertinent Factors of 39 U.S.C. § 404(d)(2)(A)

(1) The effect of the closing on the community served

The Final Determination summarizes the issues raised and Postal Service responses concerning the affect on the community. The issues were identified through questionnaires and the community meeting. *Id.* at 3A-4. An example of an issue raised is the effect of the closing on community identity. In response, the Postal Service states it will continue to use the Rex name and ZIP Code in addresses to preserve the community's identity.

In reviewing the summaries presented in the Final Determination, the Public Representative concludes that the Postal Service has attempted to consider and respond to all issues raised concerning the effect of the closing on the community served.

(2) The effect on the employees of the Postal Service employed at the office

The postmaster retired on February 28, 2011, and an OIC had been installed. It appears, but the Public Representative is not certain, that the OIC was in the non-career postmaster relief (PMR) program. The Postal Service states that the PMR may be separated from the Postal Service, and that no other Postal Service employee will be adversely affected. Final Determination at 4.

The Public Representative concludes that the Postal Service has considered the effect on employees of the Rex Post Office.

- (3) Whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining"

The Postal Service asserts that customers of the closed Rex Post Office may obtain retail services at the Lumber Bridge Post Office located 2 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Lumber Bridge Post Office. The 113 post office box customers may obtain post office box service at the Lumber Bridge Post Office. Ninety-nine post office boxes are available at the Lumber Bridge Post Office.

The Public Representative concludes that the Postal Service has arraigned for the customers of the Rex Post Office to continue to have access to effective and regular postal services. The one concern is that a sufficient number of post office boxes may not be available at the Lumber Bridge Post Office. The Public Representative suggests that the Postal Service take steps to ensure that the potential shortage does not become a problem.

- (4) The economic savings to the Postal Service due to the closing;

The Postal Service estimates annual savings of approximately \$39,111 from closure of the Rex Post Office:

Postmaster Salary (EAS-11, No COLA)	\$33,168
Fringe Benefits @ 33.5%	11,111
Annual Lease Costs	<u>3,600</u>
Total Annual Costs	\$47,879
Less Cost of Replacement Service	<u>- 8,768</u>
Total Annual Savings	\$39,111

Final Determination at 4.

The Postal Service states that receipts for the Rex Post Office were: \$18,784 in FY 2008, \$21,481 in FY 2009, \$21,192 in FY 2010. *Id.* at 2.

The Public Representative concludes that the Postal Service has considered the economic savings due to the closing. However, the Public Representative does not believe the Postal Service will realize the full amount of its estimated cost savings. The Rex Post Office was being run by an OIC, presumably at a lower cost than a postmaster. Whether or not the OIC is terminated or reassigned also influences the potential for cost savings.

(5) Concerns Raised by the Customers

The Final Determination summarizes the concerns raised by customers and Postal Service responses. The concerns were identified through questionnaires and the community meeting. *Id.* at 2-3A.

The Public Representative concludes that the Postal Service has attempted to consider and respond to all issues raised by customers.

VI. CONCLUSION

The Postal Service's Final Determination to close the Rex Post Office appears procedurally in order. Aside from the potential limited availability of post office boxes at the Lumber Bridge Post Office, and concerns that the Postal Service will not realize the cost savings it estimates, the Public Representative concludes that no persuasive argument has been presented which would prevent the Commission from affirming the Postal Service's determination to close the Rex Post Office.

Respectfully submitted,

James Waclawski
Public Representative

901 New York Ave. NW, Ste. 200
Washington, DC 20268-0001
202-789-6826, FAX 202-789-6861
james.waclawski@prc.gov